APPROPRIATING EXPENDITURE GUIDELINES FOR COUNTY GOVERNMENTS

Southern Sudan

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Contents

Introduction

There are three distinct levels of government in Southern Sudan: central, states and local government. The Interim Constitution enshrines a three tier decentralized system of governance in Southern Sudan, with revenue raising powers and executive powers allocated to the Government of Southern Sudan, state governments and to the local governments. In terms of the Interim Constitution each level of government has a right to function and legislate independently. All levels of government have democratically elected legislatures at the central and state level, or councils at local (County, Payam and Boma) level. All levels of Government in Southern Sudan are responsible for drawing up plans and budgets to present to their respective Legislative Assemblies and County Legislative Councils. All levels of Government are permitted to collect their own revenues, and funds are also transferred between levels of Government. The States receive fiscal grants from the Centre, and the counties receive fiscal grants from the Centre and the States (block grants and funds for expenditure delegated to the Counties). As a result:

- all levels of Government must present clear plans and budgets showing how they will utilise the revenues they collect and the resources they receive from other levels of Government.
- higher levels of Government (GOSS and States) must clearly show in their Budget document the amount of resources they are transferring to lower levels of Government.

The GOSS Ministry of Finance and Economic Planning have prepared guidelines to assist State and Local Government in drawing up their budget estimates. This involves making allocations for salaries, operating and capital to each activity, and making detailed estimates by each budget category for the county as a whole. These estimates must be set out in each county's annual budget and Appropriation Act. The estimates must be in line with the budget ceilings approved by the State Legislative Assembly. Counties must adhere to these ceilings throughout the planning and budgeting process. The State Ministry of Finance will not accept submissions which exceed the allocated budget ceiling, and no county must pass a budget that exceeds the allocated budget.

Sources of Local Government Legislation

The sources of legislation for the Local Government Councils are:

(a) The Comprehensive Peace Agreement;
(b) The Interim Constitution of Southern Sudan 2005;
(c) The Constitution of the respective States in Southern Sudan;
(d) The Local Government Act; 2009;
(e) Customs and Traditions of the people of the respective Local Government territory within the State; and
(f) Any other sources.

In terms of the above, the local levels of government are responsible for local services, particularly safety, sanitation, education and health services, as well as the management of natural resources (other than oil) including land and forest products.

The key sources of local government revenue are: Property Tax; Social Services (Head) Tax; Gibana; Land Tax; Annual Tax and Sales Tax. Local Governments also levy various charges and fees. In most states, Counties transfer 40% of their collections to the States and keep the remaining 60% for their own use. In reality, the major sources of revenue for local government are the fiscal transfers from GOSS and the state governments.

Legal Framework

Section 20 of the Local Government Act, 2009 provides for the creation and establishment of the local government councils. Local government councils have been established for the whole of Southern Sudan, thereby creating wall to wall local government councils. Local Government councils, currently known as Counties, have been created as institutions of governance at the local level, around which the people of Southern Sudan have organised themselves culturally, socially, economically and politically to govern their own jurisdictions.

Local Government councils have executive, legislative and customary judiciary authority as prescribed in the Interim Constitution and Local Government Act, 2009 on matters and functional areas as specified in Appendix II of the Local Government Act.

The primary responsibilities of the Local Government Councils are to:

a) regulate and maintain law and public order;
b) regulate, provide and maintain services to the people;
c) administer land and manage the environment;
d) encourage and promote local development and provide access and opportunities for the people to engage in the development of their communities; and
e) protect the rights of the people and their interests.

Role and Function of the Legislative Councils

The Local Government Act requires the Legislative Authority in each Local Government Council to be established. The Legislative Authority is the highest decision making authority in the Council, hence all the legislative powers and competence rests with the Legislative Council.

This means that within their functional areas of competence, local government councils can legislate on matters that they have jurisdiction and power to legislate. This is a power under section 37 of the Local Government Act and relates to all the "local government matters" listed in Appendix II, schedules I, II, III and IV of the Local Government Act. Several functions are set out in these schedules including:

- Customary courts and administration of justice at the local government level
- Town, rural planning and urban development planning and management
- The regulation and management of cultural and heritage sites, libraries, museums, and other historical sites;
- The management of local government finances;
- The regulation and management of irrigation and embankments;
- Direct and indirect taxation within the Local Government Council Area in order to raise revenue for the Local Government Council
- The management of fire fighting and ambulance services
- The management of recreation and sport facilities within the Council
- Local economic and social development in the Local Council
- Primary and secondary education and vocational training
- Urban development planning and management
- Trade, commerce, industry and industrial development
- Traffic regulation and management

The Legislative Council exercises its legislative powers through the enactment of Acts into by-laws. A by-law is a "subordinate legislation" made by a body other than Parliament. Current practice however is that by-laws do not necessarily have the status of "subordinate legislation", but the term "by-law" has remained to describe local government legislation. In some countries, local government councils exercise their original legislative authority as conferred by the Constitution. Although the Interim Constitution of Southern Sudan does not confer original powers to make by-laws to local government, the Local Government Act confers these powers to the legislative councils.

Local government councils could have a very large set of by-laws to enforce if it chooses to cover most aspects of the above-mentioned services, not simply one for each in the list but maybe several. This is because it is entirely feasible that more than one by-law is needed in a single service area.

The Local Government Act also states that a Legislative Council may make by-laws which prescribe rules and orders to regulate its internal arrangements, the public service, its business and proceedings, conduct and behaviour of the employees of the Local Government Council, Municipality or Town Council as the case may be. These are essentially governance by-laws. These could ideally cover matters such as the conduct of meetings, the powers and duties of committees, financial regulations, tender procedures, legal agreements, and so on. Appendix III, part II of the Local Government Act sets out the Legislative and Legal Affairs of the local legislative councils as:

- Making the internal regulations organizing the business of the Council, the committees and specialized departments.
- Establishment of rate, public health and public order courts.
- Following up the executory procedure of the legal obligations, relating to the Council affairs, such as agreements and contracts.

Although a Legislative Council may delegate many of its functions to a Committee, County Commissioner, Mayor or Town Clerk, *it cannot delegate the making of a by-law*.

Provisional Orders

Members of the Legislative Council are not full time members of the local council. They serve their communities on a part time basis, and are expected to meet at least on a quarterly basis to deliberate on council matters and business. In the event of the Legislative Council being on recess, the County Commissioner, Mayor or Town Clerk may, on an urgent matter, issue a Provisional Order having the force of law. The Provisional Order shall be tabled before the Legislative Council as soon as it convenes for ratification, wherein the legislative Council would approve and ratify the Order and enact it into a by-law if it is accepted. However, in the event that the Legislative Council does not approve the Provisional Order or the Order does not get considered at the said meeting of the Legislative Council, then the Provisional Order lapses and has no legal standing.

There are exceptions to this provision of the Local Government Act. The County Commissioner, the Mayor or Town Clerk cannot under any circumstances make any Provisional Orders on the following matters:

- Annual allocations of resources and financial revenues, and hence the annual budget or any adjustments thereto
- Penal legislation
- Political and administrative boundaries of the Boma and the Payams

Section 40, read together with section 83 of the Local Government Act give the Legislative Council exclusive power to approve the budget and pass a law giving legal effect to the budget, which cannot be delegated. A by-law may only be proposed by an elected member. The power to approve the budget and the law giving effect to the budget is the sole preserve of the Legislative Council.

County Budgets

The financial year of the Local Government Councils follows the annual calendar. It is from 1 January of every year until 31 December of the same year. Each Local Government council must prepare and approve an annual budget for the Local Council for each financial year before the start of that financial year. Therefore, each Local Council must have an approved budget before January 1st of each year. To give effect to the budget, the Local Government Act requires the Commissioner, Mayor or Town Clerk to prepare and present to the Legislative Council before the beginning of the financial year, an Appropriation Act of the allocation of revenues and expenditure in accordance with the provisions of the Local Government Act.

In order for a Local Council to comply with the above provision, the County Commissioner, Mayor or the Town Clerk must prepare and table the Council Budget Proposal to the Legislative Council by June, 30th every year. All the members of the Legislative Council must be given reasonable notice to prepare for the budget deliberations before the submission date on June 30th. In practical terms, this means that every member must be given a copy of the draft Council Budget Proposal well in advance of the meeting. As the Local Government Act provides for the Legislative Council to establish Committees for efficient and effective performance of its functions and duties, ideally the draft budget proposals should have been considered by a committee before appearing on the agenda for a full Legislative Council meeting. Notwithstanding that the draft Budget Proposals might have been discussed by the council committee, the Legislative Council would still need to be given reasonable time to study the draft council budget proposals before the full Council meeting. Upon receipt of the Proposed Budget, the Legislative Council shall at the full Council meeting deliberate on the budget, amend, reject or adopt the Budget as it deems fit.

Appropriation of Funds for Expenditure

The Legislative Council must approve an annual budget for each financial year for the local council before the start of that financial year. The proposed Council Budget shall be approved by a simple majority of the members of the Legislative Council. Appropriations are made by law. Upon approval of the Annual Budget, and once all the state budget processes have been concluded and financial allocations approved, the Legislative Council shall pass the Appropriation Act. The annual Appropriation Act is the authoritative source for details of annual appropriations provided to counties. The Act takes precedence over details provided in any other documents, statements etc. Spending money without an appropriation is a breach of section 83 of the Local Government Act.

There are no negative appropriations, that is, no deficit budgeting. Appropriated expenditure must equal income allocations. The detailed estimates specified in the approved Annual Budget, shall not be exceeded unless through a Supplementary Appropriation Act.

Local councils should incur expenditure only in terms of an approved budget and within the limits of the amounts appropriated for the different votes in the budget. Appropriated funds cannot be transferred from one Chapter to another such as between operating and nonoperating budgets. Furthermore, no money can be spent on an item not provided for in the budget without the approval of the Legislative Council.

Appropriations lapse at the end of each financial year. Surplus funds do not remain available to be spent in the next and later financial years. These funds can only be spent through a Supplementary Appropriation Act.

State and County Expenditure

States must show the funds to be spent at the county level in their budgets. This is necessary to ensure that Counties are aware of the amounts they are to receive from the states and that Counties develop their budgets in line with amounts that they will receive. States should show a detailed account of County level expenditures under each spending agency as follows:

- General County expenditure for the County Executive and Council
- the revenues collected and retained by Counties, should be shown under the Ministry of Local Government's budget
- Salaries and operating costs for specific functions paid for by the State at County level should be shown under the relevant Spending Agency. For instance, teachers' salaries which are handled through the County Education department should be shown under the Ministry of Education.
- All County-level expenditures should also be shown County by County.

Contents of an Appropriation Bill and Annual Budgets

The Appropriation Bill is made up of a narratives section setting out any budget rules and resolutions, as well as a schedule of budget tables in the prescribed format.

The narratives section must:

- Detail budget rules and regulations
- Provide a general evaluation of the economic and financial performance of the local council;
- provide a statement of the general budget, including a comparison of the proposed budget with the current budget; and
- provide explanations of any special funds or financial estimates, policies or measures to be taken by the Council regarding the financial and economic affairs of its area within the framework of the general budget.

The Appropriation Act shall also contain a schedule of the annual budget proposals in the prescribed format setting out:

- estimates of income for the budget year from each of the revenue sources including taxes, rates, fees, charges, grants, donations, contributions, borrowings, investments and savings;
  - proposals of the expenditure to be incurred during the financial year for the different votes or Chapters of the Council; and
  - estimated revenue and expenditure by vote for the current year.

An annual budget must generally be divided into an operating and a capital budget in line with international best practice. In Southern Sudan, the annual budget is divided into 3 Chapters, reflecting salaries, operating and capital budgets. Chapter 1 is salaries, Chapter 2 operating and recurrent expenditure, and Chapter 3 is the capital budget.

The Appropriations Act shall also reflect the priorities of the Council, specified in its approved service delivery and the socio-economic development plans.

Funding of expenditure in the Annual Budget

An annual budget may only be funded from:

a) realistically anticipated locally generated revenues to be collected
b) government grants
c) community contributions
d) grants and donations from organizations and individuals
e) borrowed funds and loans

Ideally borrowed funds and loans must only be for purposes of funding capital projects, Chapter 3.

Failure to Approve Budget before start of Budget Year

If a Legislative Council fails to approve an annual budget including the enactment of the Appropriation Act, necessary to give effect to the budget, the local council shall continue to spend in accordance with the previous year's approved budget. No new taxes, rates, fees and charges may be levied or the previous ones amended, and council debts, fines court orders shall be paid out of the reserve fund.

The Legislative Council should ideally reconsider the budget and again vote on the budget, or on an amended version thereof, within a few days of the council meeting that failed to approve the budget until the budget is approved.

Supplementary Budgets

A local council may revise an approved annual budget through a supplementary budget whenever new circumstances arise, or a matter of public concern proves not to have been satisfactorily addressed by the Council budget. The Commissioner, Mayor or Town Clerk, may during the financial year, submit a supplementary budget or an allocation from the Reserve Funds to the Legislative Council for approval.

A supplementary budget must seek to make changes to the revenue and expenditure estimates. It will make a reduction in the budget if there is significant under-collection of revenue during the current year or may appropriate additional revenues that have become available over and above those anticipated in the annual budget.

A supplementary budget may also be made to authorise unforeseeable and unavoidable expenditure as recommended by the County Commissioner, Mayor or Town Clerk. Unforeseeable or unavoidable expenditure may be brought about by such events as natural disasters such as floods, breakout of epidemic etc. A supplementary budget may also be made to authorise the utilisation of projected savings in one Chapter towards spending under another Chapter, authorise the spending of funds that were unspent at the end of the past financial year; and to correct any errors in the annual budget.

Implementation of the Council Budget

The Chief Administrator of the local council is responsible for implementing the council budget. The Chief Administrator is the head of the civil service of the council and the chief financial officer. The Chief Administrator reports to the Legislative Council through the County Commissioner or the Mayor as the case may be.

Expenditures made against the council's appropriation must be approved by the designated accounting officer. The Chief Administrator or Executive Director is the accounting officer for each local council. No other individual is authorised to approve a payment on behalf of the local council. In the event the designated Accounting Officer is out of station or otherwise unavailable, a senior official within the council may be nominated to act on his or her behalf, in accordance with the local council's internal procedures.

Reporting

The Executive Council is the highest executive body in the Council. The Executive Council is headed by the County Commissioner or the Mayor. Through the County Commissioner or the Mayor, the Executive Council shall report to the Legislative Council on the implementation of the budget. Furthermore, the Local Government Act requires the

Executive Council to prepare and submit audited financial statements to the Legislative Council at the end of each financial year. The financial statements are to be presented to the Legislative Council in the six months following the end of the financial year. The Legislative Council must therefore maintain oversight in the implementation of the budget.

Annexure A: Development of Appropriation Legislation[1]

The Appropriation Act provides the legal framework for the annual budget. The Act governs how the budgets are to be executed and prescribe rules and regulations to guide budget spending.

A template Appropriation Act has been made available to assist Counties in developing their own Appropriation Act. County Appropriation Acts should be modeled on the GOSS Appropriation Act. The County Appropriation Act must contain the following provisions:

1. Setting of Limits to Expenditure

To ensure that overall public spending is limited to available resources, budget ceilings will be established for each county based on revenue availability and expenditure priority within the limits of the appropriations approved for the County. No expenditures other than those authorised by the Act can be made. All expenditure must be charged according to the appropriate chapter and budget line. No expenditures can be charged against the reserve.

2. Amounts Specifically and Exclusively Appropriated

Counties receive block grants from GOSS which are conditional grants and must only be used for the intended purpose. Furthermore, Counties perform certain functions on behalf of the State governments, and receive earmarked allocations which may only be used for the purpose stipulated by the respective State Spending Agencies. These allocations must be appropriated as such, and may not be used to fund general salary or operating costs.

3. Supplementary Expenditure

The Appropriation Act sets out procedures to guide a County on how to adjust their budgets during the year from within their budget ceilings. It sets out the procedures and approvals for the transfer of funds between budget lines within the same chapter (salaries, operating, capital). Funds cannot be moved between chapters (e.g. from capital to operating) without the approval of the County Legislative Council through a Supplementary Appropriation Act.

In order to spend surplus funds over revenue estimates or funds, out of the legal reserve, a Supplementary Appropriation Act must authorise the spending.

[1] GOSS: Framework on State Public Financial Management Reform, 2010

4. Supplementary Budgets

Spending Agencies can only increase their overall expenditure with approval from the County Legislative Council, through a Supplementary Budget presented by the County Commissioner. A Supplementary Appropriation Act must also be enacted by the County Legislative Council to provide authorization for the Supplementary Budget.

5. Contractual Obligations

The Appropriation Act sets limits on contractual arrangement to be entered into by the County. These limits are in line with the limits set at the GOSS and state level that are aimed at bringing about internal controls and accountability on the part of the County Executive. Furthermore, by prohibiting contracts that extend beyond the end of the financial year, it prevents executives from committing funds that have not been appropriated.

6. Carry over into the following year

Appropriated funds not spent by the end of a financial year cannot be carried over into the next financial year. All funds at the end of the financial year will revert to the County Revenue Fund and form part of the General Reserve.

7. Responsibilities of Accounting Officers

Until the GOSS Public Financial Management Act is passed, and similar Acts are passed at the State level, and the Local Government Act amended, the Appropriation Act must also define and set out some of the duties of Accounting Officers. Accounting Officers are the Executive Directors of the County. They are responsible for approving all requests for expenditure from their County's budget.